

Application No. 09/316,651
Amendment Dated November 20, 2003
Reply to Office Action of August 21, 2003

Remarks

In a telephone interview November 19, 2003 between Applicants' representative George S. Blasiak and Examiner Michael P. Nghiem, the Examiner agreed to place the present response at the top of the examination order in view of the extraordinarily long pendency of the application.

Applicants filed the present application on May 21, 1999, almost four and a half years ago from today's date. Applicants filed a status inquiry on August 30, 2000 to determine the status of the application. It was not until June 11, 2002, over three years after the original filing of the application that the applicants received a first office action.

On September 11, 2002, applicants responded to the first nonfinal office action. Because the application had already been pending for over three years, applicants were desirous of obtaining a quick allowance. Accordingly, rather than substantively responding to the September 11, 2002 office action, Applicants merely presented claims in accordance with the indicated allowed subject matter.

To the applicants' surprise, the Examiner, on November 29, 2002 did not allow the claims previously indicated to be allowable. The Examiner instead issued a second nonfinal office action which included a statement of Withdrawal of Allowability. Accompanying the second nonfinal office action was a first supplemental search (a second Examiner search overall).

Applicants again presented claims in accordance with the indicated allowed subject matter in a response filed February 28, 2003.

The Examiner, on May 19, 2003, issued a final office action allowing most of the claims, but rejecting others, in spite of the fact that all claims, in applicants' view, were in accordance with the indicated allowable subject matter.

Application No. 09/316,651
Amendment Dated November 20, 2003
Reply to Office Action of August 21, 2003

Again, to secure a quick allowance, applicants, on August 1, 2003, filed a response, canceling the rejected claims without prejudice and disclaimer, leaving as the only claims in the application, claims that were expressly indicated by the Examiner to be allowable.

In spite of the claims having been deemed allowable in view of two separate prior art searches, the Examiner, on August 21, 2003, rendered a third nonfinal office action. The third non-final office action included a second statement of Withdrawal of Allowability. Accompanying the third nonfinal office action was a second supplemental search (the third Examiner search overall). All of the elements of the claims presently rejected, it is believed, were recited in some form (generically or narrowly) in the originally filed application filed May 21, 1999.

In the August 21, 2003 office action claims 253-288, 230, 236, 244, 250, 312-314, 316, 317, 319, and 325-327 were indicated to be allowable. Claims 253-288 were allowed. The remaining claims stand rejected under 35 USC §102(b) over U. S. Patent No. 5,460,006 to Torimitsu et al. (Torimitsu) or U. S. Patent No. 5,262,758 to Nam et al. (Nam) or under 35 USC §103 over a combination of either Torimitsu or Nam with a secondary reference. The secondary references relied upon by the Examiner in the August 21, 2003 office action include U. S. Patent No. 6,137,095 to Kashimoto et al. (Kashimoto) and Nam (claims 237, 239-243, 245-247, 249, 251, 252, and 328 are rejected over Torimitsu in view of Nam).

In response, applicants herein once again (for the fourth response in a row) and for purposes of securing a quick allowance, cancel all rejected claims without prejudice or disclaimer, and present new claims directed to subject matter indicated to be allowable by the Examiner. Except for the claim set beginning with claim 439, it is believed that the Examiner has indicated that the subject matter of all claims of the present response to be allowable. No claim cancellation will be taken as evidence that the applicants agree with a ground for a rejection or intend to abandon any subject matter. In fact, applicants expressly reserve the right to prosecute claims broader in scope or similar in scope to the cancelled claims in a related application (e.g., a continuation). Far from agreeing with the Examiner's rejections,

Application No. 09/316,651
Amendment Dated November 20, 2003
Reply to Office Action of August 21, 2003

applicants believe the Examiner's office action is deficient in several respects. To give one example of the unreliability of the Examiner's examination, it is noted that the Examiner states that Torimitsu, Fig. 1 shows portable sensing devices. Portability is a recited claim element of certain of the claims. Torimitsu, Fig. 1 manifestly does not teach portable sensing devices. In light of the fact that Torimitsu does not teach portable sensing devices, the Examiner is respectfully requested to explain his statement that Torimitsu teaches portable sensing devices.

New claims 330-365 are believed to be allowable at least for the reason that claims 253-288 were considered allowable.

New independent claims 366 and 375 are believed to be allowable at least for the reason that claims 230, 244, and 312 were indicated to be allowable. New independent claims 380 and 386 are believed to be allowable at least for the reason that claim 314 was indicated to be allowable. New independent claims 393 and 399 are believed to be allowable at least for the reason that claim 313 was indicated to be allowable. New independent claim 404 is believed to be allowable at least for the reason that claim 316 was indicated to be allowable. New independent claim 409 is believed to be allowable at least for the reason that claim 317 was indicated to be allowable. New independent claim 415 is believed to be allowable at least for the reason that claim 236 was indicated to be allowable. New independent claim 421 is believed to be allowable at least for the reason that claim 319 was indicated to be allowable. New independent claim 427 is believed to be allowable at least for the reason that claims 325 and 326 indicated to be allowable. Regarding new claim 439, new claim 439 recites:

439. (New) A monitoring system monitoring food present in at least one serving or storage container, said monitoring system comprising:
a sensing subsystem including at least one sensing device generating at least one data stream, said at least one sensing device adapted to be disposed in said at least one serving or storage container having food; and
a processing subsystem nonintegral with said at least one sensing device receiving and processing said at least one data stream,
wherein said processing subsystem encrypts data of said at least one data stream.

Application No. 09/316,651
Amendment Dated November 20, 2003
Reply to Office Action of August 21, 2003

Claim 439 recites encryption elements similar to encryption elements recited in claim 299 now cancelled without prejudice or disclaimer. The Examiner had rejected former claim 299 based on the following teaching from Kashimoto:

The security means 77 and 78 encrypt, decrypt and/or furnish a password, when the management system 33 and the appliance control system 25 communicate cooking and the like information therebetween, thereby making it difficult for a hacker to interfere or intercept the communication, or to destroy the information, so as to achieve a secure communication of the information.

Applicants respectfully point out that the above teaching relates to encryption of password data. Encryption of password data cannot seriously be taken as being anticipatory or suggestive of the claim language of encrypting a data stream generated by a sensing device.

The Examiner will note that independent claims 366, 375, 380, 386, 393, 399, 404, 409, 415, 421, and 427 do not incorporate limitations from prior base claims word-for-word. However, it will be noted that certain limitations of base claim 308, namely limitations respecting a processing system adapted to determine whether a sensing device was newly added (the "newly added device" limitation), was determined by the Examiner not to carry patentable weight (a determination applicants disagree with). In the August 21, 2003 office action, the Examiner indicates that he considers the "newly added device" limitation to be satisfied by a sending of identifier information (August 21, 2003 office action, p. 4). If the Examiner's position is that the "newly added device" limitation is needed in some of the new claims to secure allowability of the new claims, such a position will be taken by the applicants to be an admission by the Examiner, contrary to the Examiner's prior position, that the "newly added device" limitation, in fact, carries patentable weight.

Applicants emphasize that if claims have been presented more narrowly than is necessary to distinguish the art, such claiming is totally unrelated to patentability. The Examiner has demonstrated a pattern of issuing Withdrawals of Allowability. Applicants are desirous of avoiding yet another Withdrawal of Allowability. Further, applicants are desirous of reducing the number of claims (the Examiner has already objected to the number of claims). Still further, Applicants are desirous of presenting claims that are as clear and easily

Application No. 09/316,651
Amendment Dated November 20, 2003
Reply to Office Action of August 21, 2003

understood as is possible. All of the above considerations unrelated to patentability played a role in shaping the applicants' claim strategy.

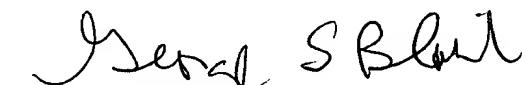
If the Examiner believes that contact with applicants' attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call applicants' attorney at the phone number noted below.

At one point Applicants had over 200 claims pending (see Office Action dated November 29, 2002). Applicants now have 109 claims pending. Accordingly, it is believed that no fees are necessary. If the Examiner is in disagreement, the Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to deposit Account No. 50-0289.

Respectfully submitted,

WALL MARJAMA & BILINSKI LLP

Date: November 20, 2003


George S. Blasiak
Registration No. 37,283
WALL MARJAMA & BILINSKI LLP
101 South Salina Street
Suite 400
Syracuse, NY 13202
315-425-9000
315-425-9114 (FAX)
Customer No. 20874

GSB/bs